

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

OHIO VALLEY ENVIRONMENTAL COALITION,
WEST VIRGINIA HIGHLANDS CONSERVANCY,
APPALACHIAN VOICES, and
THE SIERRA CLUB

Plaintiffs,

v.

CIVIL ACTION NO. 1:19-00576

BLUESTONE COAL CORPORATION,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's Motion to Continue Deadlines and Dates in the Scheduling Order and to Continue Pretrial Conference, Pretrial Proceedings, and Trial. (ECF No. 72.) Defendant requests a continuance for a reasonable period of time in light of the health concerns caused by the COVID-19 pandemic. Plaintiffs oppose the general continuance, responding that alternatives to a continuance should be considered and explored before a continuance is granted. (ECF No. 74.) Plaintiffs contend an August 2020 trial date may be preferable to a date in the fall or winter, as the number of COVID-19 cases may increase as traditional flu season progresses. And plaintiffs further express their concern that "an indefinite continuance will allow defendant to continue

discharging a toxic pollutant into West Virginia's streams without consequence." (*Id.*) Defendant replies that Outlets 005, 007, and 008 meet water quality standards under a modified permit testing system, which will be implemented sometime after August 12, 2020. (ECF No. 75.) Defendant also explains that Outlet 006 has been compliant with its selenium effluent limit for the last four months. Defendant therefore argues that plaintiffs are not likely to be prejudiced by a reasonable continuance of this matter, as no harm is likely to result from a continuance.

In its previous order denying the parties' motions to appear remotely for the Pretrial Conference scheduled for July 28, 2020, the court stated that it "would be amenable to granting a reasonable continuance of this matter if either party wishes to make such a motion." (ECF No. 71.) The court shares plaintiffs' concern that a long delay of this matter would prejudice the plaintiffs. But the court again notes the genuine health concerns of the parties' counsel, particularly given the ages of counsel and members of the court. Therefore, the court hereby **GRANTS** defendant's motion for a continuance of this matter, and will continue pretrial and trial dates as follows:

1. Pretrial Conference: September 8, 2020, at 1:00 p.m. in Bluefield;
2. Proposed Findings of Facts and Conclusions of Law: due to the court by September 8, 2020.

3. Final Settlement Conference: September 22, 2020, at 1:00 p.m. in Bluefield.

4. Trial is scheduled for September 23, 2020, at 9:30 a.m. in Bluefield.

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record.

IT IS SO ORDERED this 28th day of July, 2020.

Enter:

David A. Faber
David A. Faber
Senior United States District Judge